

Docket No. 2002-6 DD 99-01

Ascertainment of Controversy of Digital Audio Recording Royalty Distribution Proceeding

Notices of Intent to Participate

1. Alicia Carolyn Evelyn
2. Broadcast Music, Inc. (BMI); The American Academy of Composers, Authors, and Publishers (ASCAP); SESAC; Harry Fox Agency (HFA); The Songwriters Guild of America (SGA)

RECEIVED

BEFORE THE
UNITED STATES COPYRIGHT OFFICE
LIBRARY OF CONGRESS
WASHINGTON, D.C.

SEP 16 2002
GENERAL COUNSEL
OF COPYRIGHT

IN THE MATTER OF)
ASCERTAINMENT OF CONTROVERSY)
1999-2001 DIGITAL AUDIO RECORDING) DOCKET NO. 2002-6 DD 99-01
ROYALTY DISTRIBUTION PROCEEDING)

COMMENTS OF CLAIMANT, ALICIA CAROLYN EVELYN, AND NOTICE
OF INTENT TO PARTICIPATE IN THE PROCEEDINGS FOR DISTRIBUTION
OF DART MUSICAL WORKS FUND, WRITER SUBFUND ROYALTIES, 1999-2001

PRO SE CLAIMANT, ALICIA CAROLYN EVELYN, FILES THIS NOTICE
OF INTENT TO PARTICIPATE IN THE ABOVE-REFERENCED PROCEEDINGS FOR
DISTRIBUTION OF THE DART MUSICAL WORKS FUNDS, WRITERS SUBFUND,
FOR 1999, 2000, AND 2001.

A FORMER MEMBER OF THE SONGWRITERS GUILD OF AMERICA (SGA)
AND OF BROADCAST MUSIC, INC. (BMI), CLAIMANT STILL HAS ROYALTY
DISTRIBUTION ISSUES WITH THESE AGENCIES AND WITH THE AMERICAN
SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS (ASCAP), TO WHICH
I CURRENTLY BELONG, ISSUES WHICH ALSO INVOLVE LOST SONGS. THESE
AND OTHER UNRESOLVED ISSUES ARE AS DETAILED IN THE FIRST TWO
DART DISTRIBUTIONS. ADDITIONAL ISSUES ARE INCLUDED ON AN ATTACH-
ED SHEET AND ARE RELATIVE TO THESE PROCEEDINGS.

TO DATE, NO SETTLEMENT HAS BEEN REACHED WITH THE SETTLING
PARTIES. GREATER CONTROVERSY EXISTS.

RESPECTFULLY SUBMITTED,

Alicia Carolyn Evelyn

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SEPTEMBER 12, 2001

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ADDITIONAL COMMENTS OF CLAIMANT, ALICIA CAROLYN EVELYN

INDIVIDUAL CLAIMANTS ARE BEING DENIED PARITY AND JUST ARBITRATION.

1. "SETTLING PARTIES" WERE NOT REQUIRED TO SERVE US WITH THEIR MOTION FOR PARTIAL DISTRIBUTION OF 95% OF THE MUSICAL WORKS FUNDS.
2. INDIVIDUAL CLAIMANTS MUST VISIT THE COPYRIGHT OFFICE TO VIEW AND COPY THE UNSERVED MOTION , IN ORDER TO RESPOND TO IT.
3. PER THE FEDERAL REGISTER, THE OFFICE CONSOLIDATED THE DISTRIBUTIONS INTO A SINGLE PROCEEDING "IN ORDER TO ADDRESS THE MERITS OF THE SETTLING PARTIES' MOTION FOR PARTIAL DISTRIBUTION..."
4. CONTRARY TO ASSERTIONS IN THE FEDERAL REGISTER, MOTIONS RE PARTIAL DISTRIBUTION AND CONSOLIDATION WERE SERVED IN TWO PRIOR CASES.
5. SEVEN IN THE FIRST, SIX IN THE SECOND (WITH "RIGHTS" OF THE SEVENTH SUBSUMED) AND NOW, FIVE UNENTITLED AGENCY-DISTRIBUTORS CONSTITUTE THE SETTLING PARTIES, A SIGNIFICANT CHANGE REVEALED IN THE MOTION ALSO ADVISING THE FIVE HAD REACHED A CONFIDENTIAL SETTLEMENT.
6. EXCEPT TO COLLECT AND DISTRIBUTE DART FUNDS TO MEMBERS WHO HAVE EARNED DART THROUGH SALES OR PERFORMANCES, MEMBERS OF THE SETTLING PARTIES HAVE NO RIGHTS TO DART, NO VESTED INTEREST IN DART, AND ARE ALLOWED A CONFIDENTIAL SETTLEMENT ONLY IF THERE IS NO CONTROVERSY. OTHERWISE, COPYRIGHT LAW, AHRA, CHAPTER 10, §1006, IS APPLICABLE TO DETERMINATION OF EACH AND ALL CLAIMANTS' SHARES.

INDIVIDUAL CLAIMANTS OBJECT TO DISTRIBUTION OF ANY DART FUNDS TO THE SETTLING PARTIES BASED ON THEIR UNSERVED MOTION, THEIR FAILURE TO DETERMINE THE EARNINGS OF THOSE THEY REPRESENT, FOREIGN AND DOMESTIC, AND FAILURE TO FULLY REPORT THE DISTRIBUTION NUMBERS. WHILE CONTROVERSY EXISTS, THE LAW REQUIRES APPLICATION OF §1006. TO DATE, THERE IS STILL CONTROVERSY. WE HAVE NOT YET REACHED SETTLEMENT.

RESPECTFULLY SUBMITTED,

Alicia Carolyn Evelyn

ALICIA CAROLYN EVELYN
PRO SE CLAIMANT
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(607) 797-2286

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SEP 16 2002

GENERAL COUNSEL
OF COPYRIGHT

Before the
UNITED STATES COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.

In The Matter Of

ASCERTAINMENT OF CONTROVERSY
FOR THE DISTRIBUTION OF THE 1999,
2000 AND 2001 DIGITAL AUDIO
RECORDING ROYALTY FUNDS

Docket No. 2002-6 DD 99-01

**COMMENTS ON THE EXISTENCE OF CONTROVERSY AND
NOTICE OF INTENTION TO PARTICIPATE OF BROADCAST MUSIC, INC.,
THE AMERICAN SOCIETY OF COMPOSERS, AUTHORS & PUBLISHERS,
SESAC, INC., THE HARRY FOX AGENCY, INC. AND
THE SONGWRITERS GUILD OF AMERICA AS SETTLING PARTIES**

Broadcast Music, Inc. ("BMI"), the American Society of Composers, Authors and Publishers ("ASCAP"), SESAC, Inc. ("SESAC") (collectively, the "Performing Rights Organizations"), The Harry Fox Agency, Inc. ("HFA") and The Songwriters Guild of America ("SGA") (the Performing Rights Organizations, HFA and SGA are, collectively, the "Settling Parties") hereby file their comments on the existence of controversy and notice of intention to participate in the consolidated 1999, 2000 and 2001 Digital Audio Recording Technologies ("DART") Royalty Distribution Proceeding for the Musical Works Funds in accordance with the Notice with request for comments and notices of intention to participate issued by the Copyright Office (the "Office") on July 11, 2002, 67 Fed. Reg. 46698 (July 16, 2002).

I. COMMENTS ON EXISTENCE OF CONTROVERSY

As previously indicated in the Settling Parties' Motion for Partial Distribution filed June 13, 2002, the Settling Parties are pleased to report that they have finalized settlement agreements among themselves in the above-referenced proceeding. With respect to the Performing Rights Organizations, the settlement among themselves extends, for each year, to both the Writers and Publishers Subfunds of the Musical Works Funds. With respect to the Performing Rights Organizations and HFA, the settlement extends, for each year, to both the Writers and Publishers Subfunds of the Musical Works Funds. With respect to the Performing Rights Organizations, HFA and SGA, the settlement extends, for each year, to the Writers Subfund of the Musical Works Funds.

In accordance with Section 251.45(a) of the Office regulations and the Office's Notice cited above, the Settling Parties have contacted each of the other claimants identified on the Office's lists of claimants who have filed timely claims to royalty payments in either of the subfunds of the Musical Works Funds in 1999, 2000 and/or 2001. These efforts to initiate a dialogue among and between the claimants are anticipated to result, and in some instances have already resulted, in furthering settlements.

The Settling Parties are pursuing settlement with each of the following remaining individual and joint claimants identified in the Office's lists for the years and subfunds set forth below:

| <u>Claimant</u> | <u>Year(s)</u> | <u>Subfund(s)</u> |
|---|------------------|---------------------|
| Copyright Management, Inc. | 2001 | Publishers |
| James Cannings (d/b/a Our Own Performance Society in 2000 and 2001) | 1999, 2000, 2001 | Writers, Publishers |
| Eugene Curry | 1999 | Writers, Publishers |

| <u>Claimant</u> | <u>Year(s)</u> | <u>Subfund(s)</u> |
|--|------------------|---------------------|
| Alicia Carolyn Evelyn | 1999, 2000, 2001 | Writers |
| Claimants represented by Jacobson & Colfin | 1999, 2000, 2001 | Writers, Publishers |
| Missing Link Music LLC | 2001 | Publishers |
| Robert Schoenfeld | 2001 | Publishers |
| Brian Douglas Reed | 2001 | Writers |
| Scott T. Baird | 1999 | Writers |

The Settling Parties are optimistic that they will be able to achieve settlement with most or all of these claimants.¹

Given the numerous parties to this proceeding and the large amount of sales and performance data that must be analyzed in identifying works relevant to each claim, the settlement process is necessarily time-consuming. In view of the progress that has already been made in the ongoing negotiations and the complexity of multi-party negotiations involving joint and individual claimants, the Settling Parties respectfully request that the Office grant an additional four months for the parties to conduct negotiations and finalize settlements. The Settling Parties further respectfully request that the Office designate December 1, 2002, as the date on which all parties in this proceeding (who comply with the Office's Notice and file comments on the existence of

¹ BMI has advised Frank B. Russell, who filed a claim to the Writers Subfund of the Musical Works Fund for the year 1999, that he had previously authorized BMI to represent him with respect to this claim. Mr. Russell's claim in this proceeding is therefore subsumed within BMI's claim.

controversy and notices of intention to participate) report on the status of their settlement negotiations.²

II. NOTICE OF INTENTION TO PARTICIPATE

The Settling Parties hereby file their notice of intention to participate jointly in the consolidated 1999, 2000 and 2001 DART Royalty Distribution Proceeding for the Musical Works Funds, Writers and Publishers Subfunds, in accordance with the Office's Notice of July 11. The Performing Rights Organizations and HFA have filed claims to and have an interest in royalty payments in both the Publishers and Writers Subfunds of the Musical Works Funds for the years 1999, 2000 and 2001. SGA has filed claims to and has an interest in royalty payments in the Writers Subfunds of the Musical Works Funds for the years 1999, 2000 and 2001.

III. MOTION FOR PARTIAL DISTRIBUTION

On June 13, 2002, the Settling Parties filed a motion for partial distribution of the DART royalties for the years at issue in this proceeding. The Office's July 11 Notice invites claimants who are not parties to the Settling Parties' motion to file a response to the motion. At this time, the Settling Parties still believe themselves entitled to a partial distribution of 95% of the royalties in both the Publishers and Writers Subfunds of the Musical Works Funds for the years 1999, 2000 and 2001 and hereby reserve the right to reply to any filings discussing or responding to their motion.

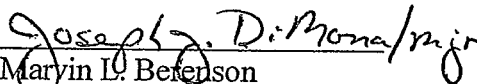
² As the Office is aware, the Performing Rights Organizations are participating in a consolidated Phase I Cable Distribution Proceeding in which direct cases are due November 4, 2002. The Settling Parties have, therefore, chosen a reporting date in the instant proceeding that will be less likely to interfere with filing deadlines in the Cable Phase I proceeding.

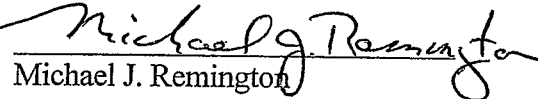
CONCLUSION

The Settling Parties believe that the interests of justice and effective administration of this proceeding warrant a brief delay in the Office's publication of a declaration of controversy and a notice of initiation of an arbitration proceeding. Accordingly, the Settling Parties respectfully request that the Office grant an additional four months for the parties to negotiate and finalize settlements and designate December 1, 2002, as a date on which all parties in this proceeding report on the status of the settlement negotiations outlined above.

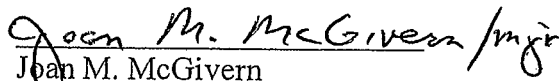
Respectfully submitted,

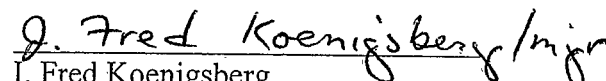
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September 16, 2002